

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH BORELLI, Individually and as Parent and Natural Guardian of J.B., JANET NICHOLS, Individually and as Parent and Natural Guardian of J.N., MARIA HART, Individually and as Parent and Natural Guardian of C.H., A.H., and J.H., ERIN ULITTO, Individually and as Parent and Natural Guardian of L.U., CRYSTAL J. LIA, Individually and as Parent and Natural Guardian of F.L., C.L., and G.L., and MICHELLE BAIONE, Individually and as Parent and Natural Guardian of R.B. and C.B.,

Plaintiffs,

-against-

BILL DE BLASIO, in his Official Capacity as Mayor of the City of New York, DR. DAVID CHOKSHI, in his Official Capacity of Health Commissioner of the City of New York, NEW YORK CITY DEPARTMENT OF EDUCATION, RICHARD A. CARRANZA, in his Official Capacity as Chancellor of the New York City Department of Education, and THE CITY OF NEW YORK,

Defendants,

ORDER

20 Civ. 9829 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

In this action, Plaintiffs – the parents and natural guardians of school-age children – claim that the City of New York (the “City”) and its Mayor and Health Commissioner, and the City’s Department of Education and its Chancellor, have violated their rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution, as well as their rights under New York’s Constitution. (Cmplt. (Dkt. No. 1) Plaintiffs’ claims are

predicated on the Mayor's November 19, 2020 announcement that in-person classes in the New York City public school system will be suspended in light of the COVID-19 pandemic. (See id.) Plaintiffs' children consist primarily of elementary school students. (See id. at ¶¶ 28, 31-33) The Complaint criticizes, in particular, the City's decision to use – as a standard for closing the schools – “a 3% threshold for infection rates.” (Id. at ¶¶ 22-23)

On Sunday, November 29, 2020, the Mayor announced that New York City public elementary schools would reopen as of December 7, 2020. See Eliza Shapiro, New York City Will Reopen Elementary Schools and Phase Out Hybrid Learning, N.Y. TIMES (Nov. 29, 2020, 11:59 a.m.), <https://www.nytimes.com/2020/11/29/nyregion/schools-reopening-partially.html>; see also Mayor Bill de Blasio (@NYCMayor), TWITTER (Nov. 29, 2020, 11:42 a.m.), <https://twitter.com/NYCMayor/status/1333088915285286913> (“Reopening our @NYCSchools buildings is paramount to recovering from #COVID19. Today we can announce that we plan to reopen buildings for: • 3-K, Pre-K and grades K-5 on Monday, December 7 • District 75 schools at all grade levels on Thursday, December 10.”); Mayor Bill de Blasio (@NYCMayor), TWITTER (Nov. 29, 2020, 11:45 a.m.), <https://twitter.com/NYCMayor/status/1333089817672953856> (“Finally, as we reopen, wherever possible we will move to 5 day a week in-person learning. We want our kids in the classroom for as much time as possible. Our families do, too. We’ll work to make it happen.”). The Mayor also said that the City would abandon the 3% test positivity threshold it had adopted for closing the school system. Id.

Given these developments, in the event that Plaintiffs wish to pursue this lawsuit, they must submit supplementary papers addressing the scenario outlined by the Mayor: in-person learning for elementary school students and remote instruction for older students.

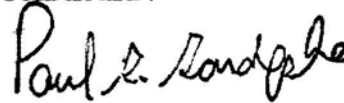
Plaintiffs must also address recent reports suggesting that while young children may be less susceptible to the COVID-19 virus than older children, adolescents appear to transmit the virus as often as adults and more readily than young children. See, e.g., World Health Org., What we know about COVID-19 transmission in schools, (Oct. 21, 2020), https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update39-covid-and-schools.pdf?sfvrsn=320db233_2. Plaintiffs must also address instances in which outbreaks have occurred in high school settings and among high school-age children. Id.

The Court's November 24, 2020 scheduling order is amended as follows:

Plaintiffs will submit their supplementary papers by 5:00 p.m. on December 2, 2020. Defendants will submit their opposition by 12:00 noon on December 7, 2020. Any reply will be submitted by December 8, 2020 at 5:00 p.m. The hearing on Plaintiffs' application for a preliminary injunction is adjourned to December 10, 2020 at 10:00 a.m.

Dated: New York, New York
November 30, 2020

SO ORDERED.



Paul G. Gardephe
United States District Judge